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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA,
SOUTH BEND DIVISION

CIVIL NO. 9.

UNITED STATES OF AMERICA,
Plaintiff,

against

CHRYSLER CORPORATION, ET AL.,
Defendants.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit

Company, Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial Credit Corporation (formerly Commercial Credit Company, Inc. an Indiana Corporation) submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

The basic question involves the authority of the trial court to modify an anti-trust consent decree on motion over the objection of the defendants.

A. *Jurisdiction.*—The statutory provisions that confer jurisdiction upon the Supreme Court to review the decree of the District Court upon a direct appeal are Section 2 of the Expediting Act of February 11, 1903, Chapter 544, 32 Stat. 823, as amended, 15 U. S. C. 29 reading as follows:

> "Sec. 2. In every suit in equity pending or hereafter brought in any district court of the United States under any of said Acts,* wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof"

and Section 238 of the Judicial Code as amended, 43 Stat. 938, 28 U. S. C. 345, as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> "(1) Section 2 of the Act of February 11, 1903, 'To expedite the hearing and determination' of certain suits brought by the United States under the antitrust or interstate commerce laws, and so forth."

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* "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, Expediting Act, Sec. 1.

B. *Dates of Decree and Petition for Appeal.*—The date of the final decree of the District Court, entitled "Final Decree—In Modification", here sought to be reviewed, is December 21, 1940 (R. 41). The date upon which the petition for appeal to this Court was presented to District Judge Thomas W. Slick was February 17, 1941 and Judge Slick allowed the application on February 17, 1941 (R. 43).

C. *Statement.* This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, entitled "Final Decree—in Modification" and dated December 21, 1940 (R. 41), modifying an earlier final decree by the same court which had been entered on November 15, 1938 (R. 27) on the consent of the parties in a suit in equity brought by the United States (Complaint R. 2, Answer R. 18) under Sections 1-4 of the Sherman Anti-trust Act of July 2, 1890, Chapter 647, 26 Stat. 209, as amended, 15 U. S. C., Sections 1-4.

Paragraph 12 (R. 27, see pp. 19-20) of the original final decree contained provisions restraining these defendants from making certain payments to any automobile manufacturing company and correspondingly restraining automobile manufacturer defendants from obtaining payments or other things of value from finance companies, including these defendants. It also enjoined the automobile manufacturer defendants from making loans to or purchasing securities of these defendants and from entering into other prohibited transactions with these defendants. The second paragraph of paragraph 12 of this decree provided as follows:

> "It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not

subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order or modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted" (R. 27, see pp. 19-20).

By notice of motion dated December 17, 1940 (Notice R. 29, Motion R. 33) the United States asked the Court to modify this provision of the final decree which by its terms was made an express condition of the decree and by order dated December 21, 1940 (R. 41) the Court, on summary application, without the taking of testimony, granted the motion and signed the so-called "Final Decree—In Modification". The text of said "Final Decree—In Modification" is as follows:

"Final Decree—In Modification.

"This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

"Now, Therefore, It Is Ordered, Adjudicated And Decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

"And It Is Further Ordered, Adjudicated and Decreed that accept as thus modified the decree as previously entered shall stand in full force and effect" (R. 41).

These defendants, therefore, have now had entered against them a final decree in a suit in equity brought in a District Court of the United States under the Act of July 2, 1890. From such a decree, by virtue of the statute hereinabove quoted, an appeal lies only to the Supreme Court of the United States. The cases so holding are: *Swift & Co.* v. *United States,* 276 U. S. 311, 323; *United States* v. *California Co-op. Canneries,* 279 U. S. 553, 558; *United States* v. *Swift & Co.,* 286 U. S. 106, 109; *Ethyl Gasoline Corp.* v. *United States* 309 U. S. 436.

The attention of the Court is particularly directed to the case of *Swift & Co.* v. *United States,* 276 U. S. 311, 323,

which is an exact precedent for the present appeal. In that case, an appeal was taken to the Supreme Court from a final decree overruling a motion to vacate a consent decree. That this Court has exclusive jurisdiction of an appeal of this nature must now be regarded as well settled in the light of the foregoing decisions.

D. *Opinions.* No opinion was delivered by the District Court either upon the entry of the original final decree or of the "Final Decree—In Modification" herein (R. 41).

Respectfully submitted,

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